

**WITHIN THE BOROUGH OF HELMETTA, COUNTY OF
MIDDLESEX, NEW JERSEY**

WHEREAS, N.J.S.A. 40A:4-53 provides that a municipality may adopt an ordinance providing for a special emergency appropriation for preparation and execution of a complete program of revaluation of real property for the use of the local tax assessor; and

WHEREAS, the Borough of Helmetta, in the County of Middlesex, New Jersey (the "Borough") has determined to undertake the preparation of a complete program of revaluation of real property for the use of its tax assessor in establishing a uniform schedule of values for equalization of the real property located within the Borough; and

WHEREAS, the Borough has determined that it is necessary to authorize a special emergency appropriation, as permitted under N.J.S.A. 40A:4-53, in order to provide adequate funds for the awarding of a contract for the preparation and execution of a complete program of revaluation of real property within the Borough; and

WHEREAS, the estimated cost of preparing and executing a complete program of revaluation of real property within the Borough is \$25,000.00.

NOW, THEREFORE, be it ordained by the Borough Council of the Borough Of Helmetta, in the County of Middlesex, New Jersey, as follows:

Section 1. Pursuant to N.J.S.A. 40A:4-53, the sum of \$25,000 is hereby appropriated for the preparation and execution of a complete program of revaluation of real property for the use of the Borough's tax assessor, and the same shall be deemed a special emergency appropriation as defined and provided for in N.J.S.A. 40A:4-55.

Section 2. The authorization to finance the appropriation shall be provided for in succeeding annual budgets by the inclusion of at least one fifth of the amount authorized by this ordinance and as provided in N.J.S.A. 40A:4-55.

Section 3. A copy of this ordinance shall be filed with the Director of the Division of Local Government Services.

Section 4. This ordinance shall take effect upon final passage and publication as required by law.

**MEETING OF MAYOR AND COUNCIL
AUGUST 8, 2011**

*** MEETING CALLED TO ORDER * STATEMENT REGARDING OPEN
PUBLIC MEETING LAW * SALUTE TO THE FLAG**

The meeting was called to order at 7:07 p.m. by Mayor Martin. Adequate notice of this meeting was provided as is required by the Open Public Meetings Law with advertising in the Home News Tribune and posting on the bulletin board. All present Pledged Allegiance to the Flag.

*** CALLING OF THE ROLL:**

Clmn. Peckham – Present
Asciolla – Present
Janeczek – Absent
Karczewski – Present
Perez – Present
Smith – Present

*** PUBLIC PORTION**

Clmn. Smith read a petition that was signed by the resident of Lake Avenue requesting speed bumps to be put on Lake Avenue to deter motorists from speeding on Lake Avenue. The Engineer will look to see if there is any type of funding to do this.

***CONSENT AGENDA – RESOLUTION # 2011 – 184**

~~178 – A resolution authorizing the Borough Tax Collector to place a lien against the property known as _____ (Block and Lot) for removal of brush, weeds and/or debris. pulled~~

179 – Borough of Helmetta joining the National Moment of Remembrance of the 10th Anniversary of September 11

180 – Extension of grace period for third quarter tax payment

~~181 – Resolution of the Borough of Helmetta authorizing the Mayor to sign the Settlement Agreement between the Borough and Spotswood PBA Local 225 -pulled~~

182 – Resolution of the Borough of Helmetta authorizing the Mayor to sign the Second Amendment to the Redevelopment Agreement between the Borough and Kaplan at Helmetta

183 – Payment of bills,

185 - Resolution of the Borough of Helmetta authorizing a special emergency Appropriation of \$25,000.00 for the purpose of funding the preparation and execution of a complete program of revaluation within the Borough of Helmetta, County of Middlesex, New Jersey

MOTION – Clmn. Smith SECOND – Clmn. Peckham

ROLL CALL: 5 – 0

*** NEW BUSINESS**

A Hearing with the Middlesex County Board of Taxation will be held on Friday. National Night Out will be held on August 2. Only the Specials will be attending this evening. The Director will be coming up from Cape May.

*** ADJOURNMENT**

There being no further business the meeting was adjourned at 7:19 p.m.

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MOTION – Clmn. Smith SECOND – Clmn. Peckham

ROLL CALL: 5 – 0

Resolution 181 – Resolution of the Borough of Helmetta authorizing the Mayor to sign the Settlement Agreement between the Borough and Spotswood PBA Local 225

MOTION – Clmn. Peckham SECOND – Clmn. Smith
ROLL CALL: 5 - 0

*** REPORTS OF MAYOR, COMMITTEES, BOROUGH ATTORNEY,
BOROUGH ENGINEER, PUBLIC WORKS, PUBLIC SAFETY**

Mayor Martin stated that National Night Out went well. Helmetta Day will be held on September 10. A meeting was held regarding the Animal Shelter and Darren will oversee the operations. A call from East Brunswick was received regarding the animal shelter and the Mayor Martin and Darren Doran will meet with them. The Business Administrator from Ewing came and had several questions regarding our shelter. Discussion was held on the voltage going into the animal shelter. Equipment was burnt up. The transformer was too far away. Since the transformers were moved, we have no problems. The equipment bill amounts to \$6,000.00 and Darren doesn't believe we should pay this. JCP&L stated that it was not their problem. Clmn. Smith explained the purpose of the meeting with the Shelter Director and the direction they will be heading. (A copy of the Public Works Director is attached). A lengthy discussion was held on Susan Bishop's property and her steps and handrail. Overtime in the Public Works Dept. was discussed.

Clmn. Karczewski asked if the Police could patrol the Park by the lake because there are beer cans, condoms, garbage strewn all over. That is why he suggested lighting in the past. The pathway by the lake is overgrown and needs to be sprayed.

Borough Engineer Terry Vogt reported that the Redevelopment Plan has been updated. DOT 2012 grant application will be coming soon and we have to pick out the project.

Director Ely stated that the Police Dept. received a \$500.00 to be used for overtime for quality of life grant. He would like to take a survey to see the residents perception of things. Director Ely wants to meet with the residents of Lake Avenue. The Mayor said not to waste time just do it. He stated that he wants that personal contact and he is going to start this weekend. Clmn. Smith assured him he will have no problems on Lake Avenue.

The trees on Old Forge Road will be taken care of in the Fall.

*** ~~READING OF ORDINANCES (First Reading)~~ pulled**

~~15 – An Ordinance amending Chapter 13 of the Code of the Borough of Helmetta entitled "Police Department"~~

16 – An Ordinance approving and adopting an amended Redevelopment Plan for the Helme Mill Redevelopment area pursuant to N.J.S.A. 40A:12A-7

MOTION – Clmn. Ascioilla SECOND – Clmn. Smith
ROLL CALL: 5 - 0

*** NEW BUSINESS**

Holy Trinity Proclamation – We will do a proclamation for their 100th Anniversary.

Helmetta Day – we will have the County Recycling Robot and the Chiropractor fro Jamesburg will be there.

Car Show – Entries are coming in for the show.

Fishing Derby – Fire Dept. will be doing it. Will order trophies.

2012 Budget - It's time to start working on it.

*** CLOSED SESSION - Personnel**

MOTION – Clmn. Peckham SECOND – Clmn. Perez

ROLL CALL: 5 – 0

A MOTION was made by Clmn. Asciolla to go into Open and SECONDED by Clmn. Smith. All were in favor.

***ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:05 p.m.

(TABLED)
RESOLUTION # 2011 - 178

**A RESOLUTION AUTHORIZING THE BOROUGH TAX COLLECTOR TO
PLACE A LIEN AGAINST THE PROPERTY KNOWN AS
_____ (BLOCK AND LOT) FOR REMOVAL OF BRUSH, WEEDS
AND/OR DEBRIS**

WHEREAS, the Borough of Helmetta (the "Borough") Construction Official has certified that brush, weeds and/or debris must be removed from _____ (block and lot) (the "Property") to secure the public health; and

WHEREAS, the Construction Official has certified that the Borough expended \$_____ for the brush, weed and/or debris removal at the Property; and

WHEREAS, the Construction Official has certified that the owner of the Property is responsible for maintaining said property, and is liable for the costs incurred by the Borough on behalf of the Property owner for brush, weed and/or debris removal; and

WHEREAS, the costs incurred by the Borough shall become a lien upon the Property and shall become collected and enforced in the same manner as taxes.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Helmetta that the Borough is hereby authorized to cause a lien for said costs in the amount of \$_____ to be placed against the Property for failure to remove brush, weeds and/or debris in accordance with N.J.S.A. 40A:48-2.13.

BE IT FURTHER RESOLVED that the Borough Clerk is hereby directed to provide a certified copy of this Resolution to each of the following:

- a. Tax Collector
- b. Construction Official
- c. Lori Russo, CFO

RESOLUTION # 2011 – 179

**Borough of Helmetta Joining the National Moment of Remembrance of the
10th Anniversary of September 11th**

WHEREAS, the governing body of the Borough of Helmetta expresses their support of the United State's Senate regarding coming together as a Nation and ceasing all work or other activity for a moment of remembrance beginning at 1:00 p.m. Eastern Daylight Time on September 11, 2011, in honor of the 10th anniversary of the terrorist attacks committed against the United States on September 11, 2001; and

WHEREAS, at 8:46 a.m., on September 11, 2001, hijacked American Airlines Flight 11 crashed into the upper portion of the North Tower of the World Trade Center in New York City, New York; and

WHEREAS, 17 minutes later, at 9:03 a.m., hijacked United Airlines Flight 175 crashed into the South Tower of the World Trade Center; and

WHEREAS, at 9:37 a.m., the west wall of the Pentagon was hit by hijacked American Airlines Flight 77, the impact of which caused immediate and catastrophic damage to the headquarters of the Department of Defense; and

WHEREAS, at approximately 10:00 a.m., the passengers and crew of hijacked United Airlines Flight 93 acted heroically to retake control of the airplane and thwart the taking of additional American lives by crashing the airliner in Shanksville, Pennsylvania, and, in doing so, gave their lives to save countless others; and

WHEREAS, nearly 3,000 innocent civilians were killed in the heinous attacks of September 11, 2001; and

WHEREAS, tens of thousands of individuals narrowly escaped the attacks at the Pentagon and World Trade Center and, as witnesses to this tragedy, are forever changed; and

WHEREAS, countless fire departments, police departments, first responders, governmental officials, workers, emergency medical personnel, and volunteers responded immediately and heroically to those horrific events; and

WHEREAS, the Fire Department of New York suffered 343 fatalities on September 11, 2001, the largest loss of life of any emergency response agency in United States history; and

WHEREAS, the Port Authority Police Department suffered 37 fatalities in the attacks, the largest loss of life of any police force in United States history in a single day; and

WHEREAS, the New York Police Department suffered 23 fatalities as a result of the terrorist attacks; and

WHEREAS, the impact of that day on public health continues through 2011, as nearly 90,000 people are at risk of or suffering from negative health effects as a result of the events of September 11, 2001, including 14,000 workers and 2,400 community residents who are sick, and tens of thousands of others whose health is being monitored; and

WHEREAS, 10 years later, the people of the United States and people around the world continue to mourn the tremendous loss of innocent life on that fateful day; and

WHEREAS, 10 years later, thousands of men and women in the United States Armed Forces remain in harm's way defending the United States against those who seek to threaten the United States; and

WHEREAS, on the 10th anniversary of this tragic day, the thoughts of the people of the United States are with all of the victims of the events of September 11, 2001 and their families; and

WHEREAS, the lives of Americans were changed forever on September 11, 2001, when events threatened the American way of life; and

WHEREAS, in 2009, Congress and the President joined together to designate September 11 as a National Day of Service and Remembrance under the Serve America Act (Public Law 111-13; 123 Stat. 1460); and

WHEREAS, in September 2009 and 2010, President Obama issued Proclamation 8413 (74 Fed. Reg. 47045) and Proclamation 8559 (75 Fed. Reg. 56463) proclaiming September 11, 2009, and September 11, 2010, respectively, as Patriot Day and National Day of Service and Remembrance; and

WHEREAS, September 11 will never, and should never, be just another day in the hearts and minds of all people of the United States;

NOW, THEREFORE BE IT RESOLVED that the governing body of the Borough of Helmetta

- (1) recognizes September 11, 2011, as a day of solemn commemoration of the events of September 11, 2001, and a day to come together as a Nation; and
- (2) offers its deepest and most sincere condolences to the families, friends, and loved ones of the innocent victims of the September 11, 2001, terrorist attacks; and
- (3) honors the heroic service, actions, and sacrifices of first responders, law enforcement personnel, State and local officials, volunteers, and countless others who aided the innocent victims of those attacks and, in doing so, bravely risked and often gave their own lives; and
- (4) recognizes the valiant service, actions, and sacrifices of United States personnel, including members of the United States Armed Forces, the United States intelligence agencies, the United States diplomatic service, homeland security and law enforcement personnel, and their families, who have given so much, including their lives and well-being, to support the cause of freedom and defend the security of the United States; and
- (5) reaffirms that the people of the United States will never forget the challenges our country endured on and since September 11, 2001, and will work tirelessly to defeat those who attacked the United States; and

BE IT FURTHER RESOLVED that on the 10th anniversary of this tragic day in United States history the governing body of the Borough of Helmetta calls upon all of the people and institutions of the United States to observe a moment of remembrance on September 11, 2011, including (i) media outlets; (ii) houses of worship; (iii) military organizations; (iv) veterans organizations; (v) airlines; (vi) airports; (vii) railroads; (viii) sports teams; (ix) the Federal Government; (x) State and local governments; (xi) police, fire, and other public institutions; (xii) educational institutions; (xiii) businesses; and (xiv) other public and private institutions; and

BE IT FURTHER RESOLVED that the governing body of the Borough of Helmetta encourages the observance of the moment of remembrance to last for 1 minute beginning at 1:00 p.m. Eastern Daylight Time by, to the maximum extent practicable ceasing all work or other activity; and marking the moment in an appropriate manner, including by ringing bells, blowing whistles, or sounding sirens.

RESOLUTION
#2011 - 180

**EXTENSION OF GRACE PERIOD FOR
THIRD QUARTER TAX PAYMENT**

WHEREAS, approval of the 2011 taxes from the State for the Borough of Helmetta came after August 1, 2011; and

WHEREAS, as a result the Tax Collector has been unable to timely prepare and mail third quarter bills for payment on August 1, 2011; and

WHEREAS, the Governing Body has been advised by the Tax Collector that the grace period for the payment of third quarter taxes should be extended:

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Helmetta that the grace period for the payment of third quarter taxes in the Borough of Helmetta be extended to September 1, 2011.

RESOLUTION # 2011 - 181

**RESOLUTION OF THE BOROUGH OF HELMETTA
AUTHORIZING THE MAYOR TO SIGN THE
SETTLEMENT AGREEMENT BETWEEN THE
BOROUGH AND SPOTSWOOD PBA LOCAL 225**

WHEREAS, the Borough of Helmetta Police Department has four police officers who are represented by Spotswood PBA Local 225 on behalf of the Helmetta Borough Police Officers ("PBA Local 225"); and

WHEREAS, supervisory officers should not be in the same negotiating unit as patrol officers, therefore the Borough of Helmetta (the "Borough") desires to remove its superior officers from the rank and file negotiations unit of PBA Local 225; and

WHEREAS, the Borough recognizes that the PBA Local 225 Superior Officers Association will now be the majority representative for the superior officers employed by the Borough; and

WHEREAS, the Borough and PBA Local 225 desire to enter into a settlement agreement memorializing the terms set forth above (the "Memorandum of Agreement").

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Helmetta that the Memorandum of Agreement between the Borough and Spotswood PBA Local 225 is hereby approved, and that the Mayor is hereby authorized to sign the Memorandum of Agreement in the form attached hereto.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Spotswood PBA Local 225
- b. David A. Clark, Borough Attorney



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

P. O. BOX 429
TRENTON, NEW JERSEY 08625-0429

www.state.nj.us/perc

Administration/Legal
(609) 292-9830

Conciliation/Arbitration
(609) 292-9898

Unfair Practice/Representation
(609) 292-6780

For Courier Delivery
495 West State Street
Trenton, New Jersey 08618
FAX: (609) 777-0089
Email: mail@perc.state.nj.us

VIA FAX

July 28, 2011

Adam Abramson, Esq.
Cleary Glacobbé Alfieri Jacobs, LLC
7 James St.
Florham Park, NJ 07932

Marcia Tapia, Esq.
Loccke, Correia, Linsky & Bukosky
24 Salem St
Hackensack, NJ 07601

Re: Borough of Helmetta
-and-
PBA Local 225
Docket No. CU-2011-034

Dear Mr. Abramson & Ms. Tapia:

Enclosed is a draft settlement agreement in the above-captioned matter. Please contact me immediately with any questions or concerns. If the agreement is acceptable, please execute and return it to me by August 10, 2011.

Very truly yours,

Melissa Ferrara
Assistant to the Director of Representation

MF/dv

New Jersey is an Equal Opportunity Employer

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Helmetta Borough and PBA Local 225
Docket No. CU-2011-034

Memorandum of Agreement

As an amicable resolution to the above-captioned petition, the parties hereby agree as follows:

1. The superior officers shall be removed from the rank and file negotiations unit, currently represented by Spotswood PBA Local 225 on behalf of the Helmetta Borough Police Officers.
2. The Borough hereby recognizes the Spotswood PBA Local 225 on behalf of the Helmetta Borough Police Officers, Superior Officers Association as the majority representative for the superior officers employed by the Borough.
3. The terms and conditions of employment for the superior officers shall remain unchanged until a new collective agreement is negotiated.
4. The Borough hereby withdraws the petition.

For Helmetta Borough:

For PBA Local 225:

By: _____

By: _____

Dated:

Dated:

RESOLUTION # 2011 – 182

**RESOLUTION OF THE BOROUGH OF HELMETTA
AUTHORIZING THE MAYOR TO SIGN THE SECOND
AMENDMENT TO THE REDEVELOPMENT AGREEMENT
BETWEEN THE BOROUGH AND KAPLAN AT HELMETTA,
LLC**

WHEREAS, on January 11, 2006, the Borough and Kaplan at Helmetta, LLC ("Kaplan") entered into a redevelopment agreement governing the parties' rights and obligations with regard to the redevelopment of the Helme Mill Redevelopment Area (the "Redevelopment Agreement"); and

WHEREAS, the parties entered into a First Amendment to the Redevelopment Agreement in or about May 2010 to terminate Kaplan's rights and obligations with regard to Parcel 5 of the Helme Mill Redevelopment Area;

WHEREAS, the Redevelopment Agreement, as amended by the First Amendment to the Redevelopment Agreement, requires that the Helme Mill Redevelopment Area be redeveloped through the construction of an age-restricted residential housing project; and

WHEREAS, pursuant to the N.J.S.A. 45:22A-46.3 et seq. (the "Conversion Act"), Kaplan filed an application with the Helmetta Planning Board seeking to convert its preliminary site plan approval for the redevelopment project to allow for the development of non age-restricted housing (the "Conversion Application"); and

WHEREAS, when the Helmetta Planning Board denied the Conversion Application, Kaplan filed suit challenging this denial in litigation entitled Kaplan at Helmetta, LLC v. Borough of Helmetta Planning Board, Docket No. MID-L-2068-10, Docket No. A-5772-09 (the "Litigation"); and

WHEREAS, due to the Borough's role as the redevelopment entity for this redevelopment area, the Borough sought and was granted leave to intervene as a party defendant in the Litigation; and

WHEREAS, prior to the final adjudication of the Litigation, the Borough, the Helmetta Planning Board, and Kaplan agreed to settle the Litigation based upon the terms and conditions set forth within the Settlement Agreement signed by the parties on July 13, 2011; and

WHEREAS, the Settlement Agreement requires the Borough to amend the Redevelopment Agreement; and

WHEREAS, the Borough wishes to amend the Redevelopment Agreement in order to implement the terms and conditions of the Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Helmetta that the Mayor is hereby authorized to sign the Second Amendment to the Redevelopment Agreement between the Borough and Kaplan at Helmetta, LLC in the form attached hereto.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution shall be provided to each of the following:

- a. Ronald Blumstein, Esq. (Attorney for Kaplan at Helmetta, LLC)
- b. David A. Clark, Esq. (Borough Attorney)
- c. James Clarkin, Esq. (Attorney for Helmetta Planning Board)

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2011 is by and between **the Borough of Helmetta** (the "Borough"), a municipal corporation with its principal place of business located at 60 Main Street, Helmetta, New Jersey 08828, and **Kaplan at Helmetta, LLC** (the "Redeveloper"), a New Jersey limited liability company with offices located at 433 River Road, Highland Park, New Jersey 08904 (collectively, the "Parties").

WITNESSETH

WHEREAS, the Parties entered into a Redevelopment Agreement on January 11, 2006 (the "Initial Redevelopment Agreement") and entered into a First Amendment to the Redevelopment Agreement in 2010 (the "First Amendment"); (the Redevelopment Agreement, the First Amendment and the Second Amendment are collectively referred to herein as the "Redevelopment Agreement"); and

WHEREAS, the Redeveloper subsequently filed an application with the Helmetta Planning Board pursuant to the "Conversion Statute" (N.J.S.A. 45:22A-46.3 et seq.) seeking to convert the preliminary site plan approval that it obtained for the Project to allow for the construction of 200 non-age restricted residential units within the Project Area (the "Conversion Application"); and

WHEREAS, when the Planning Board denied the Redeveloper's Conversion Application, the Redeveloper filed litigation entitled Kaplan at Helmetta, LLC v. Borough of Helmetta Planning Board, Docket No. MID-L-2068-10 (Law Division), Docket No. A-5772-09 (Appellate Division) (the "Litigation") challenging such denial; and

WHEREAS, the Borough intervened in the Litigation as a party defendant and counterclaimant; and

WHEREAS, prior to the final adjudication of the Litigation, the Parties entered into a Settlement Agreement resolving the Litigation which, among other things, requires that certain revisions be made to the Initial Redevelopment Agreement/First Amendment; and

WHEREAS, the Parties wish to enter into this Second Amendment to the Redevelopment Agreement (the "Second Amendment") in order to memorialize these revisions.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties do hereby covenant and agree each with the other as follows:

1. All references to the Project set forth within the Initial Redevelopment Agreement/First Amendment are hereby deleted and are replaced by the term "Modified Project". The "Modified Project" shall mean the construction of up to 200 non-age restricted residential rental units on Parcels 3 and 4, together with a smaller recreation center and a pool; provided that 50% of

the adaptive reuse units shall be one bedroom units and the other 50% of such units shall be two bedroom units; and provided further that Kaplan shall comply with the requirement, if any, to provide Affordable Housing Units within the Modified Project as set forth within Section 11.8 herein. The Modified Project shall also include the construction of the Project Improvements and the Infrastructure Improvements by the Redeveloper.

2. The Detailed Concept Plan attached to the Initial Redevelopment Agreement as Exhibit D is hereby deleted and is replaced by the Modified Detailed Concept Plan attached hereto and designated as Exhibit D-1. All references within the Initial Redevelopment Agreement/First Amendment to the Detailed Concept Plan shall be deemed to refer to the Modified Detailed Concept Plan attached as Exhibit D-1 to this Second Amendment.

3. The Project Schedule attached to the Initial Redevelopment Agreement as Exhibit C is hereby deleted and is replaced by the Modified Project Schedule attached hereto and designated as Exhibit C-1. All references within the Initial Redevelopment Agreement/First Amendment to the Project Schedule shall be deemed to refer to the Modified Project Schedule attached as Exhibit C-1 to this Second Amendment.

4. Section 11.8 of the Initial Redevelopment Agreement (entitled "Compliance with Affordable Housing Obligations") is hereby deleted in its entirety and is replaced with the following new Section 11.8:

"Section 11.8 Compliance with Affordable Housing Obligations. (a) Except as otherwise provided herein, the Modified Project shall not contain any Affordable Housing Units. For the purposes of this Settlement Agreement, the term "Affordable Housing Units" shall mean housing units whose pricing shall be affordable to households of low or moderate income (as such terms are defined under New Jersey law applicable to affordable housing) and that are deed-restricted in accordance with applicable law so that they may only be occupied by low or moderate income residents.

(b) Notwithstanding the foregoing, in the event that the Borough, in order to obtain substantive certification from COAH or any successor state agency under current or future affordable housing law, or in order to obtain repose or protection from builder's remedy litigation under any current or future affordable housing law, is obligated to provide Affordable Housing Units within the Borough, excluding however any such obligation which arises as a result of the construction heretofore or hereafter of any other project in the Borough, and taking into consideration any bonus credits then available under law, Kaplan shall provide such Affordable Housing Units within the Modified Project; provided, however, that so long as Kaplan constructs at least 150 units within the Modified Project, Kaplan's obligation to provide Affordable Housing Units within the Modified Project shall not exceed 11.1% of the number of rental units actually constructed within the Modified Project; and further provided that Kaplan's obligations under this Section shall expire upon the issuance of the Certificate of Completion for the Modified Project unless the Borough provides written notice to Kaplan prior to issuance of the Certificate of Completion that Affordable Housing Units must be provided within the Modified Project in order to comply with the requirements of this Section. If Kaplan provides Affordable Housing Units within the Modified Project in accordance with the requirements of this paragraph, it shall provide the Borough with proof, in a form acceptable to the Borough, of the

deed restriction of these units, and shall thereafter have a continuing obligation to provide the Borough, upon request, with such documents as are reasonably requested by the Borough to confirm that these units remain qualified as Affordable Housing Units."

5. A new Section 11.9 shall be added to the Redevelopment Agreement as follows:

Section 11.9 Prohibition Against Transfer of Interests in Redevelopment Agreement or in Project Area.

(a) The Redeveloper recognizes the importance of the Project Area to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Second Amendment and in allowing the development of non age-restricted rental units within the Project Area. The Borough considers that a transfer of the ownership in the Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership of or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, is for practical purposes a transfer or disposition of the Modified Project. The Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Second Amendment with the Redeveloper, and, in so doing, the Borough is relying on the obligations of the Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by the Redeveloper hereunder.

(b) As a result, prior to completion of the Modified Project, as evidenced by the issuance of a Certificate of Completion, except with the express prior written consent of the Borough, which consent shall be granted or denied in the Borough's reasonable discretion, the Redeveloper agrees for itself and all successors in interest that there shall be no sale, transfer or assignment of (i) any of the properties within the Project Area; (ii) any equity interest in the Redeveloper, nor any direct or indirect change in control of the Redeveloper as it exists on the Effective Date, whether by changes in capitalization, merger, or otherwise; or (iii) the Agreement.

(c) Additionally, the Redeveloper agrees that after completion of the Modified Project, it shall operate the rental units within the Project Area for a minimum of thirty (30) years and shall not sell, transfer or assign its rights in the rental units within this thirty (30) year period unless it obtains the express prior written consent of the Borough to do so, which consent shall be granted or denied in the Borough's reasonable discretion.

(d) Notwithstanding the foregoing, the Borough hereby consents, without the necessity of further approvals from any entity, to the following transfers:

(i) the lease by the Redeveloper of residential space within the Project Area;

(ii) the transfer or assignment of the Redeveloper's rights under the Redevelopment Agreement and/or in the properties within the Project Area to an urban renewal entity formed by the Redeveloper in order to qualify for a long term tax exemption for the properties within the Project Area and controlled by or under common control of the Redeveloper (i.e. with the Redeveloper owning 51% or more of the ownership interest in the urban renewal entity), provided that (1) the successor and assignee of the Redeveloper shall assume all of the obligations of the Redeveloper

hereunder, but the Redeveloper shall remain primarily liable for the performance of the Redeveloper's obligations, (2) a copy of the written instrument of conveyance and assignment and assumption of this Redevelopment Agreement shall be delivered to the Borough for review and approval prior to execution, and once approved and executed, fully executed copies provided to the Borough promptly, and (3) such conveyance or assignment does not violate any of the Government Approvals;

(iii) a mortgage or related security granted by the Redeveloper to a mortgagee for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under the Redevelopment Agreement, including any mortgage or mortgages and other liens and encumbrances granted by the Redeveloper to a mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Modified Project; provided, however, that: (1) the Redeveloper shall give the Borough at least fifteen (15) days prior written notice before entering into such mortgage and shall describe the nature of such mortgage, and the name(s) and address(es) of the mortgagee and any parties, individuals or entities involved in the mortgage; (2) the Redeveloper shall simultaneously provide to the Borough true and complete copies of all construction schedules and project budgets submitted to such mortgagee; and (3) the amount of such mortgage, lien or other encumbrance does not exceed the Redeveloper's costs associated with the acquisition, development, construction or marketing of the Modified Project."

6. A new section 11.10 shall be added to the Redevelopment Agreement as follows:

"11.10 Operation of Rental Units Within Project Area. The Redeveloper agrees that it will own and operate the rental units within the Project Area for a period of at least thirty (30) years from the date that a Certificate of Completion is issued for the Modified Project. During the time period that the Redeveloper owns and operates the rental units within the Project Area, the Redeveloper shall require that any persons seeking to rent units within the Project Area provide proof of sufficient income for such rental. For the purposes of this Redevelopment Agreement, proof of sufficient income shall mean proof that a prospective tenant has income in an amount of at least three times the annual rent for the unit; provided, however that this requirement shall not apply to the Affordable Housing Units within the Project Area."

7. Section 10.3 of the Initial Redevelopment Agreement (entitled "Payment of Borough Costs") is hereby deleted and is replaced by the following new Section 10.3.

"10.3 Payment of Borough Costs. The Borough shall provide the Redeveloper with invoices setting forth Borough Costs incurred by the Borough as soon as practicable after they are received from the professionals. The Redeveloper shall have thirty (30) days from receipt of such invoices to either fund to the Borough the amount of such invoices or to provide detailed written objection to all or any part of such invoices. Any portion of the invoice not objected to shall be funded within this thirty (30) day period. The Parties will attempt to resolve any disputed charges within a reasonable time after receipt of

the Redeveloper's objections. If such efforts fail, then the Redeveloper may appeal to the county construction board of appeals within forty-five (45) days after such efforts are terminated in writing, or as otherwise provided in Section 53.2a of the Municipal Land Use Law (the "MLUL"), and the provisions of this section of the MLUL shall apply to any such appeals."

8. The Project Improvements attached to the Initial Redevelopment Agreement as Exhibit B is hereby deleted and is replaced by the Modified Project Improvements attached hereto and designated as Exhibit B-1.

9. The definition of the term "Project Completion Date" set forth within the Initial Redevelopment Agreement is hereby deleted and is replaced by the following new definition:

"Project Completion Date" shall mean the date on which the Redeveloper has substantially completed construction of the Modified Project.

10. All references within the Initial Redevelopment Agreement and the First Amendment to the Redeveloper's requirement to construct age restricted residential housing shall be deleted and replaced by the Redeveloper's obligation to construct the non age-restricted residential housing as described within the Modified Project.

11. Sections 9.1(c) and (d) of the Initial Redevelopment Agreement are hereby deleted.

12. Section 14.1 of the Initial Redevelopment Agreement is hereby modified require that notices to the Borough be sent to the following individuals:

Borough Clerk
Borough of Helmetta
60 Main Street
Helmetta, New Jersey 08828

And

David A. Clark, Esq.
GluckWalrath, LLP
428 River View Plaza
Trenton, New Jersey 0611

13. This Second Amendment may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

14. Each of the Parties hereto which are business entities represent and warrant that each has complied with all necessary formalities and the undersigned signatory has been duly authorized to execute this Second Amendment on behalf of such entity.

15. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms within the Redevelopment Agreement/First Amendment.

16. Except as explicitly modified herein, all of the terms and conditions of the Redevelopment Agreement and the First Amendment shall remain in full force and effect.

17. **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

ORDINANCE # 2011 - 15

**AN ORDINANCE AMENDING CHAPTER 13 OF THE
CODE OF THE BOROUGH OF HELMETTA,
ENTITLED "POLICE DEPARTMENT"**

WHEREAS, the Borough Code of the Borough of Helmetta (the "Borough") currently contains Chapter 13, entitled "Police Department" which establishes and governs the Police Department within the Borough; and

WHEREAS, the Borough desires to amend Chapter 13 (Police Department) of the Code in order to re-allocate certain duties between the Police Director and the chief law enforcement officer of the Borough Police Department; and

WHEREAS, the Borough further desires to supplement Chapter 13 of the Code in order to permit members of the Police Department, during their off-duty hours, to engage in certain extra duty police-related activities for private persons or entities under specified circumstances; and

WHEREAS, the goal of said ordinance is to allow the Police Department to run in a more efficient and orderly manner to serve the residents and guests of the Borough.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Helmetta that Chapter 13 of the Borough Code entitled, "Police Department" is hereby amended as follows (additions underscored, deletions struck-through):

1. Chapter 13, Section 5 (Sergeants) shall be amended as follows:

13-5. Sergeants.

There shall be within the Police Department of the Borough of Helmetta, a maximum of ~~one~~ (1) two (2) Sergeants to properly maintain the efficiency of the Police Department. The Sergeants shall be assigned by the Police Director to supervise all personnel as assigned by the Police Director and shall promote, enforce and abide by the rules and regulations of the Police Department of the Borough of Helmetta.

- A. Each Sergeant shall have and exercise the following authority and perform the following duties:

- (1) He or she, if so designated by the Director, shall be next in command to the Police Director and, in the case of absence or disability of the Director, shall perform all the duties of the Police Director when so ordered by the Police Director. He or she shall be superior in rank to patrol officers.
- (2) It shall be his or her duty to take cognizance of any and all neglect of duty, disobedience of orders and other offenses on

the part of the members of the Police Department. He or she shall also ensure the police headquarters and other property of the Police Department are kept in proper order and condition and that strict discipline is always maintained and that efficient service is performed by the Police Department.

- (3) He or she shall ensure that all employees of the Police Department are properly instructed in his or her duties and assignment, and pay particular attention to the instruction of new members of the force.
- (4) He or she shall in the absence of the Director, issue such orders and give such instructions as he or she may deem necessary or proper, from time to time as to the administration and management of the Police Department.
- (5) He or she shall assist the Director in the performance of his or her duties and shall be responsible for seeing that all laws of the State of New Jersey and ordinances of the Borough are duly enforced and observed and that the public peace is maintained.
- (6) He or she shall during his or her tour of duty, in addition to the performance of the duties herein listed, exercise the authority and perform the duties of a patrol officer as far as practicable.
- (7) He or she shall communicate to the other members of the Police Department and to the special police officers assigned to active duty all specific tasks made and instructions and shall require the prompt performance thereof and compliance therewith. Moreover, he or she shall communicate and effectuate the policies and procedures developed and formulated by the Police Director and shall require the prompt performance thereof and compliance therewith by all police personnel.
- (8) He or she shall observe the work of all other members of the Police Department and shall report such observations to the Police Director. He or she shall criticize constructively the work of individual officers and give such instruction and direction as may be appropriate to improve the efficiency of their work.
- (9) He or she shall supervise and direct patrol officers in the proper administration of their duties and shall be responsible to the Director for the proper performance of their duties.

(10) He or she shall be responsible for providing reports to the Police Director regarding the day-to-day operations of the police force.

2. Chapter 13, Section 18 (Police Director) shall be amended as follows:

13-18. Police Director.

- A. ~~a.~~ The Police Director, ~~who shall be appointed and supervised by the Public Safety Committee, shall serve as the executive of the Police Department.~~
- B. ~~b.~~ The Police Director shall receive an annual salary/stipend as established by the Council in accordance with applicable laws.
- C. ~~e.~~ The Police Director shall serve as the active administrative and executive officer of the Police Department and shall command the Department. ~~be responsible for the police department's efficiency and day to day operations and shall carry out the powers and duties established under N.J.S.A. 40A:14-118 and in accordance with applicable case law and the Attorney General guidelines and directives.~~
- D. ~~d.~~ The Police Director shall be the person to whom the Sergeants shall directly report to.
- E. ~~e.~~ The Police Director shall determine policy and direction for the Police Department.
- F. ~~f.~~ The Police Director shall provide monthly reports to the Public Safety Committee concerning the state of the Police Department.
- G. ~~g.~~ The Police Director shall issue special emergency directives, as necessary, to protect the health, safety and welfare of the Borough in an emergency.
- H. ~~h.~~ The Police Director shall receive daily reports or other periodic reports, as designated by the Police Director from the Sergeants.
- I. ~~i.~~ The Police Director shall designate the Sergeants responsible for performing the Police Director duties when the Police Director is absent.
- J. The Police Director by written order, subject to the approval of the Public Safety Committee, shall establish such bureaus, divisions and services as may be required for the proper functioning of the Police Department's work. The Director shall have the power to establish the

respective duties and responsibilities for all members of the Police Department and to require them to perform the same.

3. Add New Section, Chapter 13-19 "Special Duty Assignments."

§ 13-19. Special duty assignments.

A. Statutory authority. The Attorney General of the State of New Jersey and the Division of Local Government Services have determined that members of a municipal Police Department may, during their off-duty hours, engage in police-related activities for private persons or entities.

B. Definitions:

(1) "Thirty-Party Assignment" shall mean work performed by a sworn member of the Police Department where the member performs extra-duty police-related activities which are paid for and/or reimbursed by third parties rather than by the Borough of Helmetta.

(2) "Outside Employment" means work performed by a sworn member of the Police Department where the member is paid by a third party to perform non-police duties.

C. Authorization for Third-Party Assignments. The chief law enforcement officer is hereby authorized to permit members of the Police Department, during their off-duty hours, to engage in police-related activities for third parties under the provisions of this ordinance.

(1) Any and all Third-Party Assignments must be determined and approved by the chief law enforcement officer prior to the commencement of such employment. The chief law enforcement officer shall assign all third-party police-related activities pursuant to the Police Department policy for third-party work assignments.

(2) The chief law enforcement officer shall obtain such information as he deems necessary in order to make his determination as to whether to permit the requested assignment.

(3) The chief law enforcement officer shall be guided by the nature of the assignment and should avoid those with conflicts of interest and/or high risk of injury or which pose an unreasonable threat to the health, safety or welfare of the police officer(s) or residents of the Borough.

(4) The chief law enforcement officer may assign a patrol vehicle for use in performing the requested assignment if he

determines that such patrol vehicle is necessary in order to properly perform the contracted duty. The chief law enforcement officer may deny assignment or use of police officer(s) or vehicles and/or impose any condition(s) or requirement(s) as he, in his sole discretion, may deem to be in the best interests of the Borough and/or the police officer(s) or public safety.

D. Nature of work. Third-Party Assignments shall be considered as a "special assignment from independent contractors" and will not be considered as a direct assignment.

- (1) Officers engaged in such Third-Party Assignments shall conform to all Police Department rules, regulations, and procedures.
- (2) In no event shall an Third-Party Assignment interfere with Borough related police assignments.
- (3) After approval of the activity by the chief law enforcement officer, the assignment of the necessary extra duty police officer(s) shall be made on a voluntary basis in accordance with a fair and reasonable system established and administered by the chief law enforcement officer.
- (4) Any law enforcement officers, when so employed by the Borough, shall be treated as an employee of the Borough provided, however, that wages earned for outside employment shall not be applied toward pension benefits of law enforcement officers so employed, nor shall hours worked for outside employment be considered in any way compensable as over time.

E. Escrow accounts.

- (1) Any person or entity requesting the services of an off-duty law enforcement officer of the Police Department shall estimate the number of hours such law enforcement services are required, which estimate shall be approved in writing by the chief law enforcement officer, and shall establish an escrow account with the Borough chief financial officer by depositing an amount sufficient to cover the rates of compensation and administrative fees set forth in this section, for the total estimated hours of service.
- (2) Prior to the chief law enforcement officer posting any request for services of off-duty law enforcement officers, the Police Director shall verify that the balance in the escrow account of the person or entity requesting services is sufficient to cover

the compensation and fees for the number of hours specified in the request for services. The chief law enforcement officer shall not post a request for services from any person or entity unless all fees and compensation required in the manner described above have been deposited with the Borough chief financial officer. No officer shall provide any such services for more hours than those which are specified in the request for services.

- (3) In the event the funds in such an escrow account should become depleted, services of off-duty law enforcement officers shall cease and requests for further or future services shall not be performed or posted until additional funds have been deposited in the escrow account in the manner described above.
 - (4) The person or entity requesting such services shall be responsible for ensuring that sufficient funds remain in the escrow account in order to avoid any interruption of services.
- F. Request for services. All requests for the services of off-duty law enforcement officers for a period of one week or longer shall be forwarded to the chief law enforcement officer for posting at least ten (10) days before such services are required.
- G. Rates of compensation; administrative fee; payment for services. Fees for the services to be rendered shall be established by resolution of the Borough Council and may be amended from time to time at the Borough Council's discretion.
- H. Insurance coverage. The Borough shall be responsible for providing all necessary insurance coverage as required by law, including, but not limited to workers' compensation, public liability and claims for damage, personal injury including death or damage to property which may arise as a result of the Borough's performance under the agreement.
- I. Indemnification. Any private person or entity requesting the services of extra-duty police officers shall indemnify the Borough for any and all damages which may arise from the officer's employment by said private person or entity.
- J. Authorization for Outside Employment. The chief law enforcement officer is hereby authorized to permit members of the Police Department, during their off-duty hours, to engage in Outside Employment wholly unrelated to the officer's full-time work for the Borough, subject to periodic re-assessment and approval by the chief law enforcement officer. The officer shall be paid directly by his

employer for any authorized Outside Employment and the provisions of subsections C through I above shall not apply.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

ORDINANCE # 2011 - 16

AN ORDINANCE APPROVING AND ADOPTING AN AMENDED REDEVELOPMENT PLAN FOR THE HELME MILL REDEVELOPMENT AREA PURSUANT TO N.J.S.A. 40A:12A-7

WHEREAS, the Helme Mill Redevelopment Area has been designated as an area in need of redevelopment by the Borough of Helmetta (the "Borough") pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.; and

WHEREAS, the Borough adopted a redevelopment plan governing the Helme Mill Redevelopment area (the "Redevelopment Plan") and subsequently the Borough Council amended the original plan on several occasions;

WHEREAS, the Redevelopment Plan currently requires that the Helme Mill Redevelopment Area be redeveloped through the construction of an age-restricted residential housing project; and

WHEREAS, pursuant to the N.J.S.A. 45:22A-46.3 et seq. (the "Conversion Act"), Kaplan filed an application with the Helmetta Planning Board seeking to convert its preliminary site plan approval for the redevelopment project to allow for the development of non age-restricted housing (the "Conversion Application"); and

WHEREAS, when the Helmetta Planning Board denied the Conversion Application, Kaplan filed suit challenging this denial in litigation entitled Kaplan at Helmetta, LLC v. Borough of Helmetta Planning Board, Docket No. MID-L-2068-10, Docket No. A-5772-09 (the "Litigation"); and

WHEREAS, due to the Borough's role as the redevelopment entity for this redevelopment area, the Borough sought and was granted leave to intervene as a party defendant in the Litigation; and

WHEREAS, prior to the final adjudication of the Litigation, the Borough, the Helmetta Planning Board, and Kaplan agreed to settle the Litigation based upon the terms and conditions set forth within the Settlement Agreement signed by the parties on July 13, 2011; and